Petitioner's defense, after all, was that *another Honduran national*, known as "Sirena," had committed the crime, and that Sirena *fled to Honduras* the day after the victim died. Pet. 6. Petitioner, however, had difficulty obtaining evidence corroborating Sirena's existence, much less his flight to Honduras. Pet. App. 12a n.38. Absent the violation of petitioner's Vienna Convention rights, the Honduran Consulate would have provided precisely the corroboration of Sirena's existence and flight that petitioner needed. Pet. 23-24. Standing alone, that evidence would have significantly impacted the trial, because it would have elevated the debate from whether Sirena even existed—an issue the prosecution contested in its closing argument, Pet. 23—to who killed James Merry.

Respondent, for its part, does not deny that the Honduran Consulate would have provided official immigration records conclusively showing that Sirena fled to Honduras just after Merry's death. Instead, respondent claims that such proof would have been immaterial. Br. in Opp. 21-22. But that assertion is belied by the prosecution's closing argument, which focused specifically on whether there was reliable proof that "this so-called Sirena" even existed or "was on the plane" to Honduras as one witness testified. 3/19/98 Tr. 20-21, 75; Pet. 6-7. If that information was immaterial, it is hard to see why the prosecution would have undertaken such a specific (and ultimately mistaken) refutation.

Respondent also claims that no jury would believe the "parade of obviously biased gang members" who, when confronted with the picture of Sirena provided by the Honduran Government after trial, identified him as the person who killed James Merry. Br. in Opp. 18. But credibility issues are for the jury. The Commonwealth's violation of the Vienna Convention foreclosed the jury from making that judgment. Respondent also ignores the closely divided trial testimony. Three witnesses with obstructed views identified petitioner, while two others, with better views, testified that he was not the killer. Under the circumstances, a parade of witnesses identifying the fugitive Sirena as the assailant surely would have raised a reasonable doubt in at least one juror's mind.

Finally, respondent confidently states that "[n]o Virginia court would admit" Sirena's surreptitiously videotaped confession, Br. in Opp. 22, in which he brutally described his crime with self-authenticating detail. See Pet. 8, 24-25. But the only two cases respondent cites for that proposition held that third-party confessions *are* admissible. *Chambers* v. *Mississippi*, 410 U.S. 284, 298-302 (1973); *Hines* v. *Virginia*, 117 S.E. 843, 846-849 (Va. 1923). In short, if ever there were a case in which the Vienna Convention's protections would have made an enormous difference at trial, this is it.

II. Petitioner's *Brady* Claim Is Not Procedurally Barred

Although Virginia rules require that transcripts be filed if they are "*necessary* to permit resolution of appellate issues," Va. S. Ct. R. 5:11(b) (emphasis added), that rule does not foreclose this Court's review of petitioner's federal *Brady* claims. As respondent acknowledges, Br. in Opp. 24, state-law bars do not foreclose this Court's review unless they are both "firmly established and *regularly* followed." *Ford* v. *Georgia*, 498 U.S. 411, 423-424 (1991) (emphasis added). Virginia courts simply do not apply the transcript rule with regularity and predictability. Respondent does not dispute the many instances in which Virginia courts have determined that lower court transcripts are not necessary to permit appellate resolution. Pet. 28-29. At most, respondent has offered several examples where courts have reached contrary results. But that proves only that transcripts are *sometimes* necessary. It does not prove that they were necessary here—particularly given the full transcript of petitioner's criminal trial, the extensive findings of the habeas court, and the purely legal nature of the issues raised on appeal. See Pet. 29.[3]

---

[3] Respondent claims that *Wolfe* v. *Virginia*, 371 S.E.2d 314 (Va. App. 1988), proves that appellate review without a transcript is rarely allowed. Br. in Opp. 26. As respondent correctly notes, however, the court there *permitted* appellate review with an incomplete trial record. 371 S.E.2d at 316. Respondent must offer more than the suspect "exception that proves the rule" to divest this Court of jurisdiction. In addition, the record in *Wolfe* did not contain *either* a "trial transcript *or*

Besides, whether *Brady* evidence is material is a *federal* question that, as a matter of *federal* law, can be resolved by comparing the trial record to the *Brady* evidence. Pet. 29-30. Virginia may, in some cases, prefer to conduct that inquiry in light of additional evidence presented in state habeas hearings, but the Commonwealth cannot foreclose review of a federal issue by requiring record materials not necessary to determination of the federal issue. Petitioner must carry his burden to prove materiality without the transcript, but that does not allow the Commonwealth to convert the fundamentally *federal* question of materiality into an issue of *state* law.

Finally, respondent's suggestion that the *Brady* evidence was not material is demonstrably wrong. Petitioner's defense at trial was that another Honduran national, Sirena, swung the fatal blow. The prosecution's response to that defense was to suggest to the jury that "this so-called Sirena" did not exist. The *Brady* evidence establishes that Sirena exists, was at the crime scene, and was seen holding a "cocked" bat near the victim. It shows that the police encountered Sirena near the crime scene shortly after the attack, with red "ketchup" stains on his clothes. It shows that Sirena, when questioned, lied about having been at the murder scene and gave inconsistent statements about where he was coming from. Pet. 25-26. It simply is not credible to say that there is no reasonable probability that the evidence would have led even a single juror to doubt whether petitioner should be convicted of first-degree murder. Respondent blithely assumes that the jury would have resolved all disputes raised by the suppressed *Brady* materials in the Commonwealth's favor. But it was respondent's violation of *Brady* that prevented the jury from actually deciding those issues.

* * * * *

For the foregoing reasons and those stated in the petition, the petition for writ of certiorari should be granted.

---

[a] statement of facts," *ibid.* (emphasis added), whereas here the record includes a complete transcript of petitioner's criminal trial, the *Brady* evidence, and extensive factual findings by the habeas court.

Respectfully submitted.

JOHN C. KIYONAGA
526 King Street
Suite 213
Alexandria, VA 22413
(703) 730-0009

JEFFREY A. LAMKEN
Counsel of Record
MARK T. STANCIL
MICHAEL G. PATTILLO, JR.
HEATHER M. MCCANN
BAKER BOTTS L.L.P.
1299 Pennsylvania Ave., NW
Washington, D.C. 20004-2400
(202) 639-7700

Counsel for Petitioner

OCTOBER 2005

FILED
SEP 23 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(3)

No. 05-51

IN THE

Supreme Court of the United States

MARIO A. BUSTILLO,

Petitioner,

v.

GENE M. JOHNSON, DIRECTOR,
VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

BRIEF FOR *AMICI CURIAE* REPUBLIC OF HONDURAS, ET AL. IN SUPPORT OF PETITIONER

PAUL R.Q. WOLFSON
Counsel of Record
ANNE K. SMALL
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION AND SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. THE QUESTION OF UNITED STATES OBLIGATIONS UNDER THE VIENNA CONVENTION WARRANTS THIS COURT'S ATTENTION 5

A. The Vienna Convention Offers Important Protections To *Amici*'s Nationals 5

B. Violations Of The Vienna Convention, And The Treatment Of Claims Of Such Violations By United States Courts, Are Matters Of Continuing Concern To *Amici* 8

C. Fundamental Principles Of International Law Require That Domestic Courts Offer Remedies, Consistent With The ICJ's Interpretation, For Violations Of The Vienna Convention 12

II. PETITIONER WAS MATERIALLY PREJUDICED BY VIRGINIA LAW ENFORCEMENT'S FAILURE TO COMPLY WITH THE VIENNA CONVENTION 15

CONCLUSION 18

TABLE OF AUTHORITIES

CASES

Page(s)

American Insurance Ass'n v. *Garamendi*, 539 U.S. 396 (2003) 12
Block v. *Compagnie Nationale Air France*, 386 F.2d 323 (5th Cir. 1967) 11
Breard v. *Greene*, 523 U.S. 371 (1998) 4, 9, 11, 14, 17
Bustillo v. *Commonwealth*, No. 001110, slip op. (Va. Jan. 17, 2001) 4
Bustillo v. *Commonwealth*, Nos. 2321-98-4, 2422-98-4, 2000 WL 36590 (Va. Ct. App. Apr. 11, 2000) 4
Cardenas v. *Dretke*, 405 F.3d 244 (5th Cir. 2005) 10
Conde v. *State*, 860 So. 2d 930 (Fla. 2003) 11
Gomez v. *Commonwealth*, 152 S.W.3d 238 (Ky. Ct. App. 2004) 10
Hilton v. *Guyot*, 159 U.S. 113 (1895) 13
Martin v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816) 11
Medellin v. *Dretke*, 125 S. Ct. 2088 (2005), *cert. granted*, 125 S. Ct. 686 (2004) 9, 17
Murray v. *The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804) 13
Standt v. *City of New York*, 153 F. Supp. 2d 417 (S.D.N.Y. 2001) 10
State v. *Martinez-Rodriguez*, 33 P.3d 267 (N.M. 2001) 10
State v. *Sanchez-Llamas*, 108 P.3d 573 (Or. 2005), *pet'n for cert. filed* (No. 04-10566, June 7, 2005) 10
Teague v. *Lane*, 489 U.S. 288 (1989) 11
United States v. *Arjona*, 120 U.S. 479 (1887) 13
United States v. *Beckford*, 2000 U.S. App. LEXIS 6752 (4th Cir. 2000) (unpublished) 9
United States v. *Cazares*, 60 Fed. Appx. 223 (10th Cir. 2003) (unpublished) 8
United States v. *Chaparro-Alcantara*, 37 F. Supp. 2d 1122 (C.D. Ill. 1999) 10

TABLE OF AUTHORITIES—Continued

Page(s)

United States v. *Contreras-Cortez*, 41 Fed. Appx. 252 (10th Cir. 2002) (unpublished) 8
United States v. *De La Pava*, 268 F.3d 1045 (2d Cir. 2001) 10
United States v. *Emuegbunam*, 268 F.3d 377 (6th Cir. 2001) 9, 10
United States v. *Felix-Felix*, 275 F.3d 627 (7th Cir. 2001) 9
United States v. *Ferris*, 19 F.2d 925 (N.D. Cal. 1927) 13
United States v. *Gamez*, 301 F.3d 1138 (9th Cir. 2002) 8
United States v. *Gonzales*, 339 F.3d 725 (8th Cir. 2003) 8
United States v. *Guerrero*, 45 Fed. Appx. 265, 266 (4th Cir. 2002) (unpublished) 9
United States v. *Hongla-Yamche*, 55 F. Supp. 2d 74 (D. Mass. 1999) 10
United States v. *Li*, 206 F.3d 56 (1st Cir. 2000) (*en banc*) 10
United States v. *Minjares-Alvarez*, 264 F.3d 980 (10th Cir. 2001) 9
United States v. *Ortiz*, 315 F.3d 873 (8th Cir. 2002) 8
United States v. *Pink*, 315 U.S. 203 (1942) 12
Ware v. *Hylton*, 3 U.S. (3 Dall.) 199 (1796) 12

CONSTITUTIONAL PROVISIONS

U.S. Const. art. VI 12

INTERNATIONAL MATERIALS

Avena and Other Mexican Nationals (Mex. v. *U.S.)*, 2004 I.C.J. 128 (Mar. 31) 2, 4, 10
Case Concerning United States Diplomatic & Consular Staff in Tehran (U.S. v. *Iran)*, 1980 I.C.J. 3 (May 24) 5, 14
International Covenant of Civil and Political Rights, Dec. 9, 1996, 999 U.N.T.S. 171 6

TABLE OF AUTHORITIES—Continued

Page(s)

LaGrand Case (F.R.G. v. *U.S.)*, 2001 I.C.J. 466 (June 27) 2, 4, 10

Memorial of the United States, *Case Concerning United States Diplomatic and Consular Staff in Tehran* (*U.S.* v. *Iran*), 1980 I.C.J. Pleadings 174 (Jan. 12) 7

Optional Protocol Concerning the Compulsory Settlement of Disputes, Apr. 24, 1963, 21 U.S.T. 325, 586 U.N.T.S. 488 2

United Nations Charter art. 94, Aug. 8, 1945, 59 Stat. 1031, 3 Bevans 1179 14

Vienna Convention of Consular Relations (Paraguay v. *United States)*, 1998 I.C.J. 248 (Apr. 9) 9

Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 ..... 1, 5, 6

OTHER AUTHHORITIES

Aceves, William J., Abstract, *The Vienna Convention on Consular Relations: A Study of Rights, Wrongs, and Remedies*, 31 Vand. J. Transnat'l L. 257 (1988) 7

Department of State Legal Adviser William H. Taft IV, Remarks to the National Association of Attorneys General (Mar. 20, 2003), *available at* http://usinfo.state.gov/dhr/Archive/2003/Oct/09-464655.html 12

Department of State, *Consular Notification and Access*, *available at* http://travel.state.gov/pdf/CNA_book.pdf (last visited July 29, 2005) 7, 8, 13

7 Foreign Affairs Manual §§ 400-426.2-1 (2004), *available at* http://foia.state.gov/REGS/fams.asp?level=2&id=8&fam=0 7

Lee, Luke, *Consular Law and Practice* (2d ed. 1991) 7

TABLE OF AUTHORITIES—Continued

Page(s)

Liptak, Adam, *U.S. Says It Has Withdrawn From World Judicial Body*, N.Y. Times, Mar. 10, 2005, at A5 2

Restatement (Third) of Foreign Relations Law (1990)
§ 102(1)(b) & cmt. f 13
§ 321 cmt. a 13

Table FBP-1, *Profile of Selected Demographic and Social Characteristics: 2000 (Honduras), available at* http://www.census.gov/population/cen2000/stp-159/stp159-honduras.xls (last visited Sept. 20, 2005) 8

Table FBP-1, *Profile of Selected Demographic and Social Characteristics: 2000 (Argentina), available at* http://www.census.gov/population/cen2000/stp-159/stp159-argentina.xls (last visited Sept. 20, 2005) 8

Table FBP-1, *Profile of Selected Demographic and Social Characteristics: 2000 (Bolivia), available at* http://www.census.gov/population/cen2000/stp-159/stp159-bolivia.xls (last visited Sept. 20, 2005) 8

Table FBP-1, *Profile of Selected Demographic and Social Characteristics: 2000 (El Salvador), available at* http://www.census.gov/population/cen2000/stp-159/stp159-el_salvador.xls (last visited Sept. 20, 2005) 8

Table FBP-1, *Profile of Selected Demographic and Social Characteristics: 2000 (Mexico), available at* http://www.census.gov/population/cen2000/stp-159/STP-159-Mexico.xls (last visited Sept. 20, 2005) .....

IN THE

Supreme Court of the United States

No. 05-51

MARIO A. BUSTILLO,

Petitioner,

v.

GENE M. JOHNSON, DIRECTOR,
VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

BRIEF FOR *AMICI CURIAE* REPUBLIC OF HONDURAS, ET AL. IN SUPPORT OF PETITIONER

Amici curiae Republic of Honduras, Argentine Republic, Republic of Bolivia, Republic of El Salvador, United Mexican States, Republic of Paraguay, and Oriental Republic of Uruguay respectfully submit this brief in support of the petition for a writ of certiorari.[1]

INTEREST OF *AMICI CURIAE*

Each *amicus*, as well as the United States, has adopted the Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 ("Vienna Convention" or

[1] No counsel for a party authored this brief in whole or in part. No person or entity other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief. Counsel for both parties consented in writing to the filing of this brief.

"Convention"). Article 36(1)(b) of the Convention provides that a signatory nation that detains a foreign national must, upon request of the detainee, promptly inform the foreign national's consulate of the detention, and also must advise the detainee of "his rights" under the Convention to consular notification. Article 36(2) of the Convention provides that signatory states must ensure that their laws and regulations allow "full effect" to be given to the protections afforded by the Convention.

In addition, *amici* Argentine Republic, United Mexican States, Republic of Paraguay, and Oriental Republic of Uruguay are signatories to the Vienna Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes, Apr. 24, 1963, 21 U.S.T. 325, 586 U.N.T.S. 488 ("Optional Protocol"), as was the United States until recently.[2] The Optional Protocol provides that "disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice." Optional Protocol art. 1, 21 U.S.T. at 325. The International Court of Justice ("ICJ") has issued several decisions interpreting Article 36. In two decisions, it has held that, at least in criminal cases where "severe penalties" have been imposed, judicial remedies for a violation of Article 36 must be available to the individual whose rights under that Article have been violated. In particular, the ICJ has held that (a) Article 36(1)(b) creates individual rights, and (b) under Article 36(2)'s requirement that "full effect" be given to those rights, judicial remedies for violation of those rights cannot be barred by state procedural default rules. *See Avena and Other Mexican Nationals (Mex.* v. *U.S.)*, 2004 I.C.J. 128 (Mar. 31); *LaGrand Case (F.R.G.* v. *U.S.)*, 2001 I.C.J. 466 (June 27).

---

[2] The United States announced its withdrawal from the Optional Protocol on March 7, 2005. Adam Liptak, *U.S. Says It Has Withdrawn From World Judicial Body*, N.Y. Times, Mar. 10, 2005, at A5.

Amici have a vital interest in the Vienna Convention issues raised by the petition for certiorari in this case.[3] Millions of *amici's* citizens reside in the United States, and many more visit the United States every year. Through the consular notification provision of Article 36, the Convention offers important protections to these foreign nationals in the United States. Absent consular notification, detained foreign nationals often lose the benefit of consular assistance in criminal proceedings. This loss, in turn, may limit their ability to mount an effective defense and may even result in a wrongful conviction. Accordingly, United States compliance with the Vienna Convention, and the availability of meaningful remedies in the event of violations, are matters of vital importance to *amici*.

Amici also have broader interests at stake in this petition. *Amici* have a significant interest in both United States compliance with international obligations and its adherence to the interpretations accorded to treaties by international adjudicative bodies, such as the ICJ. This petition provides the Court with an opportunity to reaffirm the United States' commitment to the consular system established by the Vienna Convention and to principles of reciprocity and comity essential to the proper functioning of international law and diplomacy.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner Mario A. Bustillo, a Honduran national, was arrested, tried, and convicted for the first-degree murder of James Merry in the Commonwealth of Virginia. At no point prior to Bustillo's conviction was the Honduran Consulate informed of the proceedings against him, and Bustillo himself was not informed of his rights under the Convention to communicate with the Consulate. There is no dispute that the Commonwealth violated the Convention; the United States has since conceded as much. Bustillo's attempts at

---

[3] *Amici* address only the first question raised in the petition and express no view on the two remaining questions presented.

post-conviction relief based on claims under the Vienna Convention, however, have failed. On direct review, the Virginia Court of Appeals affirmed the conviction, *Bustillo* v. *Commonwealth*, Nos. 2321-98-4, 2422-98-4, 2000 WL 36590, at *3 (Va. Ct. App. Apr. 11, 2000), and the Supreme Court of Virginia denied the petition for appeal, *Bustillo* v. *Commonwealth*, No. 001110, slip op. at 1 (Va. Jan. 17, 2001). On state habeas, the Fairfax County Circuit Court found the claim to be procedurally defaulted and the Supreme Court of Virginia denied review. *See* Pet. App. A, F.

As the facts of this case indicate, violations of Article 36 are not infrequent in the United States. Unfortunately, efforts by the State Department to promote greater compliance with Article 36 by local law enforcement authorities have not had any appreciable effect. Unsurprisingly, then, individuals detained in the United States whose rights under Article 36 have been violated have turned to the courts for redress. Thus far, however, those efforts have generally been unsuccessful. Lower courts disagree on whether Article 36 creates individual rights, even though the ICJ has squarely ruled that it does. In addition, in light of a *per curiam* opinion of this Court denying certiorari, *see Breard* v. *Greene*, 523 U.S. 371 (1998), many lower courts have declined to hear claims based on Vienna Convention violations in post-conviction proceedings based on state procedural default rules. These decisions are in conflict with two post-*Breard* decisions of the ICJ, *Avena and Other Mexican Nationals (Mex.* v. *U.S.)*, 2004 I.C.J. 128 (Mar. 31) and *LaGrand Case (F.R.G.* v. *U.S.)*, 2001 I.C.J. 466 (June 27). Those ICJ decisions hold that the Convention creates individual rights, and that (at least in cases involving "severe penalties"), to ensure that such rights be given "full effect," as the Convention requires, parties to the Convention must provide judicial remedies for such violations, notwithstanding procedural default rules.

The conflicts between lower courts in this country and the ICJ warrant this Court's attention. Uniform adherence to the Vienna Convention's consular notification provisions

is of vital importance to *amici*. Moreover, United States adherence to the Convention, as interpreted by the ICJ, will help safeguard the consular system and the values it entails. Such adherence will also protect fundamental tenets of international law, and, in turn, will enhance the potential for treaties to effectuate the shared goals of nations around the world.

Further underscoring the importance of these questions of international law are the dramatic consequences that proper resolution of these issues will have for Petitioner. The violations of the Vienna Convention did not produce only institutional or abstract harms; the violation of Article 36 materially prejudiced Petitioner. Accordingly, the facts of his case both demonstrate the practical importance of the consular notification provisions of the Vienna Convention and amplify the pressing need for this Court's review.

ARGUMENT

I. THE QUESTION OF UNITED STATES OBLIGATIONS UNDER THE VIENNA CONVENTION WARRANTS THIS COURT'S ATTENTION

A. The Vienna Convention Offers Important Protections To *Amici*'s Nationals

Although consular relations have existed since ancient times, the Vienna Convention provided the first true codification of a consular system. Member states enacted the Convention to "contribute to the development of friendly relations among nations, irrespective of their different constitutional and social systems." Vienna Convention, Preamble, 21 U.S.T. at 77. "The unimpeded conduct of consular relations, which have been established between peoples since ancient times, is no less important in the context of present-day international law, in promoting the development of friendly relations among nations, and ensuring the protection and assistance for aliens resident in the territories of other states." *Case Concerning United States Diplomatic & Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3, 40 (May 24) ("*Diplomatic and Consular Staff*").

A central component of the consular system established by the Convention is the consular assistance provided to foreign nationals living and traveling abroad. *See* Vienna Convention art. 5 (discussing functions of consulate). The Convention includes particular provisions for consular involvement when authorities detain a foreign national. If the detained national so requests, the receiving state must inform the national's consulate of his detention. *Id.* art. 36. "Any communication addressed to the consular post by the person [arrested must] also be forwarded by the authorities without delay." *Id.* The authorities must inform the person arrested of "his rights" under the Convention, including the right to have his consular post notified of his arrest. *Id.* Consular officers, in turn, have the right to visit a national in prison, "to converse and correspond with him, and to arrange for his legal representation." *Id.* Finally, all of these rights "shall be exercised in conformity with the laws and regulations of the receiving State," but all states' laws and regulations must also enable "full effect" to be given to the purposes for which the rights at issue were created. *Id.*

The protections offered by the Vienna Convention to individual foreign nationals support and complement individual rights recognized by the United States Constitution in the Fifth Amendment right to due process and the Sixth Amendment right to a fair trial, as well as international guarantees of fair criminal procedures recognized in Articles 9 and 14 of the International Covenant of Civil and Political Rights, Dec. 19, 1996, 999 U.N.T.S. 171, to which the United States and *amici* are parties. Because "detained foreign nationals are inevitably distressed by the prospect of securing and preserving their rights in a legal system with whose systems they are not familiar," consular officials provide tangible aid in securing those constitutional rights. Luke Lee, *Consular Law and Practice* 145 (2d ed. 1991) (quoting Dep't of State Telegram 40298 to Embassy Damascus, Feb. 21, 1975). Consular officials can assure that their nationals are represented by competent and culturally sensitive counsel, provide help in securing translation, assist in locating witnesses or documentary evidence available in the foreign